

CHAPTER 9 WAIVERS OR VARIANCES FROM RULES

193B—9.1(544A) Applicability. This chapter governs waivers or variances from board rules in the following circumstances: The board has exclusive rule-making authority to promulgate the rule from which the waiver or variance is requested or has final decision-making authority over a contested case in which the waiver or variance is requested; and no statute or rule otherwise controls the grant of a waiver or variance from the rule from which the waiver or variance is requested.

9.1(1) Board's authority. The board may grant a waiver of, or variance from, all or part of a rule, upon the criteria described in rule 9.2(544A).

9.1(2) Compliance with statute. No waiver or variance may be granted from a requirement which is imposed by statute. Any waiver or variance must be consistent with statute.

193B—9.2(544A) Criteria. A waiver or variance under this chapter may be granted only upon showing that:

1. Substantially equal protection of health, safety and welfare will be afforded by a means other than that prescript in the particular rule for which the variance or waiver is requested;
2. The waiver or variance will not harm other persons or will not adversely affect the public interest;
3. Because of the circumstances, either the requester is unable to comply with the particular rule without undue hardship or compliance with the particular rule would be unnecessarily and unreasonably costly and serve no public benefit; and
4. Provision of a waiver or variance under the circumstances would not adversely impact an overall goal of uniform treatment of all licensees.

193B—9.3(544A) Request. A request for a waiver or variance must be submitted in writing to the board as follows:

9.3(1) License application. If the request relates to a license application, the request shall be made in accordance with the filing requirements for the license in question.

9.3(2) Contested case. If the request relates to a pending contested case, the request shall be filed in the contested case proceeding.

9.3(3) Other. If the request does not relate to a license application or a pending contested case, the request may be submitted to the board's executive secretary.

193B—9.4(544A) Elements. A request for waiver or variance shall include the following information where applicable:

1. The name, address, and telephone number of the person requesting the waiver or variance and the person's representative, if any.
2. The specific rule from which a waiver or variance is requested.
3. The nature of the waiver or variance requested, including any alternative means or other proposed condition or modification proposed to achieve the purpose of the rule.
4. An explanation of the reason for the waiver or variance, including all material facts relevant to grant the waiver or variance in question.

5. A description of any prior contact between the board and the requester relating to the regulated activity or license affected by the proposed waiver or variance, including a description of each affected license held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity or license within the last five years.

6. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by a grant of waiver or variance.

7. Any information known to the requester regarding the board's treatment of similar cases.

8. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver or variance.

9. Any necessary releases of information authorizing persons with knowledge to disclose relevant information to the board.

193B—9.5(544A) Ruling. The board shall respond in writing to all requests. The ruling shall include the reason for granting or denying the request and, if approved, the time period during which the waiver or variance is effective. The board may condition the grant of waiver or variance on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

193B—9.6(544A) Public availability. All final rulings in response to requests for waivers or variances shall be indexed and available to members of the public at the board office.

193B—9.7(544A) Voiding or cancellation. A waiver or variance is void if the material facts upon which the request is based are not true or if material facts have been withheld. The board may at any time cancel a waiver or variance upon appropriate notice and hearing if the board finds that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver or variance has failed to achieve the objectives of the statute, or the requester has failed to comply with conditions set forth in the waiver or variance approval.

193B—9.8(544A) Violations. Violation of conditions in the waiver or variance approval is the equivalent of violation of the particular rule for which the waiver or variance is granted and is subject to the same remedies or penalties.

193B—9.9(544A) Appeals. Any request for an appeal from a decision granting or denying a waiver or variance shall be in accordance with the procedures provided in Iowa Code chapter 17A and this chapter. An appeal shall be taken within 30 days of the issuance of the ruling in response to the request unless a contrary time is provided by rule or statute.

These rules are intended to implement Iowa Code chapter 544A.

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